

Amendment and Response

Applicant: Jack D. Lemmon

Serial No.: 10/688,718

Filed: October 17, 2003

Docket No.: M190.143.101

Title: PROSTHETIC HEART VALVE SIZER ASSEMBLY WITH FLEXIBLE SIZER BODY

REMARKS

This is responsive to the Final Office Action mailed July 5, 2006. In that Office Action, the Examiner rejected claims 1-6, 8-13, 15-21, 25-28, 30, and 40 under 35 U.S.C. §102(e) as being anticipated by Johnson et al., U.S. Publication No. 2004/0024451 ("Johnson"). The Examiner's indication that claim 38 has been allowed and that claims 11 and 22-24 would be allowed if re-written, is noted with appreciation.

With this Response, claims 1 and 20 have been amended; claims 9 and 10 have been cancelled; and newly presented claims 41 and 42 added. Claims 1-8, 11-31, 38 and 40-42 are pending in the application and are presented for consideration and allowance.

35 U.S.C. §102 Rejections

Claim 1 has been amended to incorporate the limitations of now-cancelled claim 11. In light of the Office Action's indication that claim 11 recite allowable subject matter, it is respectfully submitted that amended claim 1, and all claims depending therefrom, are now in a condition for allowance.

Claim 20 has been amended to recite that the sizer assembly includes a handle and a flexible sizer body, with the flexible sizer body including an outer ring and an annular wall otherwise forming a plurality of extremities. In this regard, the sizer assembly of amended claim 20 is characterized by the absence of leaflets connected to the extremities. In contrast, the prosthetic heart valve of Johnson clearly requires leaflets (*Johnson*, para. 46). Thus, amended claim 20 is not anticipated by Johnson. In addition, it is respectfully noted that pursuant to 35 U.S.C. §103(c), Johnson is not available in formulating an obviousness rejection. Thus, it is respectfully submitted that amended claim 20, as well as all claims depending therefrom, are allowable.

Newly Presented Claims

Newly presented claim 41 recites a sizer assembly including a handle, a flexible sizer body, and a cylinder sizer. The flexible sizer body is coupled to a first end of the handle,

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whereas the cylinder sizer is coupled to an opposite, second end of the handle. It is respectfully submitted that none of the cited references teach or otherwise suggest at least these limitations, such that newly presented claim 41 is allowable. For at least these same reasons, newly presented claim 42, otherwise depending from claim 41, is also allowable.

CONCLUSION

In view of the above, Applicant respectfully submits that pending claims 1-8, 11-31, 38 and 42 are in form for allowance and are not taught or suggested by the cited references. Therefore, reconsideration and withdrawal of the rejections and allowance of claims 1-8, 11-31, 38 and 42 are respectfully requested.

Applicant hereby authorizes the Commissioner for Patents to charge Deposit Account No. 50-0471 in the amount of \$200.00 to cover the fees as set forth under 37 C.F.R. 1.16(h).

The Examiner is invited to contact the Applicant's representative at the below-listed telephone numbers to facilitate prosecution of this application.

Any inquiry regarding this Amendment and Response should be directed to Timothy A. Czaja at Telephone No. (612) 573-2004, Facsimile No. (612) 573-2005. In addition, all correspondence should continue to be directed to the following address:

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Respectfully submitted,

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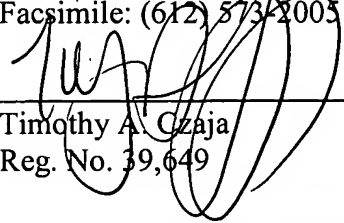
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CERTIFICATE UNDER 37 C.F.R. 1.8:

The undersigned hereby certifies that this paper or papers, as described herein, are being deposited in the United States Postal Service, as first class mail, in an envelope address to: Mail Stop RCE, Commissioner for Patents, P.O. Box 1450, Alexandria, VA, 22313-1450 on this 5th day of September, 2006.

By: 

Name: Timothy A. Czaja